



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1996

Mr. Miles K. Risley
Assistant City Attorney
City of Victoria
Legal Department
P.O. Box 1758
Victoria, Texas 77902-1758

OR96-1994

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 34552.

The City of Victoria (the "city") received a request for all statements and reports submitted to the Attorney General's Office concerning an incident which occurred on January 27, 1995. You seek to withhold the requested information under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a) a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish

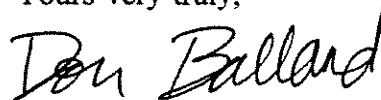
that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") Civ. Prac. and Rem. Code § 101.

Because your request for a decision from this office was made prior the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the claim letter you received satisfies the requirements of the TTCA or applicable municipal statute or ordinance. If this assumption is correct, you may withhold the requested documents. We also note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of TTCA.

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary, Open Records Decision No. 542 (1990) at 4, the city may choose to release any information that is not otherwise confidential. Gov't Code § 552.007. Information that is confidential must be withheld even after the litigation has concluded. See Gov't Code § 552.352.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the fact presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/SAB/ch

Ref.: ID# 34552

Enclosures: Submitted documents

cc: Ms. Constance Filley Johnson
2040 Minatre Road
Inez, Texas 77968
(w/o submitted documents)